

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
At Martinsburg**

**KARA KOWALSKI,**

**Plaintiff,**

**v.**

**Civil Action No. 3:07-CV-147  
Judge John Preston Bailey**

**BERKELEY COUNTY PUBLIC SCHOOLS, et al.**

**Defendants.**

**MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT**

COME NOW Defendants, the Berkeley County Board of Education ("the Board"), Manny P. Arvon, III, Ronald Stephens, Becky J. Harden, Buffy Ashcraft and Rick Deuell, by and through their undersigned counsel, to move this Honorable Court to dismiss this action pursuant to Rule 12 of the Federal Rules of Civil Procedure. The Plaintiff fails to state a claim against any of the Defendants upon which relief can be granted, therefore, dismissal is appropriate. Specifically, these Defendants are entitled to dismissal on the following bases:

1. Plaintiff fails to state a claim against the Berkeley County Board of Education and the Defendants sued in their official capacities upon which relief can be granted.
2. The Individual Defendants should be dismissed because the Plaintiff fails to state a claim against them upon which relief can be granted under state law statutory immunity and the doctrine of qualified immunity;
3. Plaintiff fails to state a claim under 42 U.S.C. §1983 for the alleged violations of her First Amendment Rights upon which relief can be granted;
4. Plaintiff fails to state a claim under 42 U.S.C. §1983 for the due process clause violations she alleges upon which relief can be granted;

5. Plaintiff fails to state a claim under 42 U.S.C. §1983 for violation of the Equal Protection Clause of the U.S. Constitution upon which relief can be granted;

6. Plaintiff fails to state a claim under 42 U.S.C. §1983 for violation of the under the Cruel and Unusual Punishment Clause of the U.S. Constitution upon which relief can be granted;

7. Plaintiff fails to state a claim for negligent and/or wanton and reckless infliction of emotional distress upon which relief can be granted.

8. Plaintiff is not entitled to the injunctive relief she seeks.

9. Plaintiff is not entitled to the declaratory relief that she seeks.

The Defendants also submit this day their Memorandum of Law in Support of this motion and respectfully refer the Court to it for a more detailed discussion of these issues.

WHEREFORE, the Defendants respectfully request that this Court grant their *Motion to Dismiss*.

Respectfully submitted this 25<sup>th</sup> day of June, 2008.

**/s/ Tracey B. Eberling**

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